

Remarks:

In the June 11, 2007, Office Action, Claims 33-37 were rejected under 35 U.S.C. § 112, first paragraph, for reciting the term "edible". In addition, Claims 32, 34 and 36 were rejected under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, obvious under 35 U.S.C. § 103(a) in light of U.S. Pats. No. 2,102,052 (Yearly), 4,463,018 (Carr), and 5,007,194 (Coody). Further, Claims 1, 4-7, 10-29 and 31-37 were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of U.S. Pat. No. 3,964,203 to William Williams ("Williams") and U.S. Pat. No. 4,463,018 to William Carr ("Carr"), in view of U.S. Pat. No. 4,484,924 to Ernst Pfleiderer ("Pfleiderer"), U.S. Pat. No. 6,827,041 to Frank Hague et al. ("Hague"), U.S. Pat No. 3,408,918 to Robert Talty et al. ("Talty"), and U.S. Pat. No. 4,224,028 to Geraldine Thiele ("Thiele"). Finally, Claim 30 was rejected under 35 U.S.C. § 103(a) as being unpatentable in view of U.S. Pat. No. 4,484,924 to Ernst Pfleiderer ("Pfleiderer") in view of U.S. Pat. No. 3,670,534 to Bruce Gould ("Gould") and U.S. Pat. No. 3,913,360 to Eric Holdsworth ("Holdsworth").

Claims 1, 33, 35 and 37 have been amended. In particular, Applicant has amended Claims 33, 35 and 37 to remove use of the "edible" terminology.

However, in light of the amendments presented herein, and the discussion below, Applicant asserts that the claims are novel and unobvious in light of ANY of the references cited herein. As such, favorable reconsideration of the application is respectfully requested.

The Yearley Reference

Yearley teaches a method of making a pork rind bait. The Yearley process is very specific to pork rind, and not other animal hides, as it is taught that pork rind has certain advantages as bait material. However, Yearley teaches that the prior art pork rind bait must be kept wet or preserved in order to be stored, reused or maintained – this is the nature of the problem addressed by Yearley. To achieve this, Yearley teaches pork rind that is impregnated with a sodium sulfate composition, dehydrated with a polyhydric alcohol to remove the water and kneaded to make it pliable.

The Carr Reference

Carr teaches an artificial bait material. The bait material is a composite matrix formed of a gel material having an attractant integrally included within the composite matrix before the gel cures to its final hydrophilic, solid form. Even where the attractant is added while the gel is forming, as recited in Col. 1, lines 1-3 of Carr, it is incorporated into the matrix of an artificial gel material. The Carr final gel product is so flexible that it requires a reinforcing element formed in the matrix.

The problem addressed by Carr is specific to artificial baits, that is, those that are not manufactured of animal hides. One skilled in the art would certainly not process the colloidal solution/gel matrix of Carr in the same fashion as one would treat an animal hide. Indeed, chemical treatment of a gel matrix, such as the type disclosed in Carr, with any of the sulfates, alcohols or bleaches recited in any of Yearley, Williams, Pfleiderer, Hague, Talty or Thiele would utterly destroy the bait material. Clearly, gel formation and manufacture of artificial fishing lures therefrom is a distinct teaching from those that disclose natural animal hide treatment processes. As such, Applicant asserts that Carr is wholly irrelevant to the present application, and certainly teaches away from any reference the teaches the use of natural animal hides as bait.

The Coody Reference

Coody teaches sheepskin lure material that includes long wool or animal hair fibers still attached thereto as an integral part of the lure. Coody is intended to overcome the problems associated with the use of pork rind, as described in Col. 2, lines 17-37. Coody teaches a chamois treated with surfactant, and teaches specifically away from treatment of the skin with cod liver oil, which can damage the skin and prevent it from absorbing dye. Col. 4, lines 59-68 and Col. 5, lines 1-12. Indeed, dyeing of the lure to brightly contrasting colors is another essential element of the Coody invention.

The present claims most certainly distinguish over Coody by reciting a crustacean bait and a process that is free of animal hair. More importantly, Coody is an inappropriate reference to base a Section 103 rejection, as Coody teaches long wool

fibers of the animal as a critical and key part of the invention, see Col. 5, lines 41-52. Coody describes "leather" material as a material having its hair removed, underscoring the fact that the Coody invention requires a chamois having hair attached. In light of this teaching, there is simply no reason one would be motivated to modify this reference to achieve the present invention. Combining the teachings of Coody with any teaching that suggests hair-free animal hide would be illogical and render the Coody reference inoperable for its intended purpose.

Claim 32 depends from Claim 1, Claim 34 depends from Claim 33 and Claim 36 depends from Claim 35. In light of the above discussion of the references, Applicant asserts that Claims 1, 32 and 33 are novel and unobvious over the cited references, and therefore Claims 32, 34 and 36 are also not anticipated and not obvious in view of Yearly, Carr and/or Coody.

#### The Williams Reference

Williams teaches a chamois fishing lure that is impregnated with animal blood. Actual treatment or processing of animal hide of Williams is not discussed, taught or mentioned in Williams, as the Williams invention can be used with any commercially available chamois. The only manufacturing step included in Williams is the impregnation of the chamois with animal blood.

Williams is totally lacking any teaching that would render the present invention obvious. There are no animal hide processing steps taught or even implied by Williams. Applicant discloses actual method steps. Applicant does not see how even the most skilled artisan would be able to obtain predictable results in processing an animal hide in the manner provided by the Applicant, where no animal hide processing steps are even disclosed.

Moreover, the present claims each disclose a crustacean bait that is free of animal blood, as such, Williams is an inappropriate reference in which to base an obviousness rejection.

#### The Pfleiderer Reference

Pfleiderer teaches a process for producing unhaired leather. The resultant Pfleiderer leather is designed for shoe, upholstery and clothing, and this intended use is critical to the Pfleiderer invention and the manufacturing process disclosed therein. As such, the uniformity of chemical treatment and degree of opening (how well the leather will take dye and softening compositions) disclosed by the Pfleiderer invention directly effects the properties of the leather. Applicant disagrees that one skilled in the art would be motivated by Pfleiderer to create the crustacean bait of the present invention, in light of Williams or not. Clearly, leather intended for use in the Pfleiderer applications is of a different variety than the animal hides processed to be submerged in water.

Nonetheless, and importantly, the Pfleiderer process required enzymatic treatment during the hair removal process. A skilled artisan would recognize that the Pfleiderer enzymatic treatment could not be used in any process carried out at an elevated temperature. In particular, any hair removal process that includes temperatures over about 100 F would destroy the enzymes. Pfleiderer does not teach any hair removal process that does not include the required enzymatic treatment.

#### The Hague Reference

Hague teaches a bleached pigskin product and process for making animal chews. There is no mention of using the pigskin for bait or in an environment where it is exposed to water. There is no hair removal process described in Hague, so how this reference can teach any such method steps (especially in light of the lack of teaching in Williams, Carr and Pfleiderer) is not understood by the Applicant. Further, Hague, like Pfleiderer, requires an enzyme treatment step to remove some of the proteins from the skin and open or swell the skin. Hague then discloses several additional processing steps, none of which motivate one skilled in the art to achieve the invention as presently claimed.

#### The Thiele and Talty Reference

Thiele is another method of manufacturing and preserving leather, and certainly does not add or teach any modification of the above addressed references that would render the present claims obvious.

Talty discloses an edible casing. Most certainly, use of the process described in the Applicant's invention, and the other cited references, is easily distinguished from this invention. Namely, one would not use the same chemical treatment steps desirable for manufacturing leather or curing animal hides for an injected product.

A skilled artisan, even after reading each and every reference cited in the Office Action, could not obtain the Applicant's method. First, the primary references cited, Williams and Carr are totally divergent teachings, and the theories in which they each operate and the problem each are meant to address are substantially different. There is no reason to combine these references, they unequivocally teach away from each other. Indeed, one skilled in the art would certainly not process the colloidal solution/gel matrix of Carr in the same fashion as one would treat an animal hide. In addition, neither Williams nor Carr teach any of the steps of the Applicant's claims – both of these references are totally inappropriate teachings upon which to base an obviousness rejection.

The remainder of the cited references, Pfleiderer, Hague, Thiele and Talty do not suggest modification or method steps that would cure the deficiencies of Williams and/or Carr. There is no teaching in the prior art to begin one method of processing a hide, stop midstream, switch directions entirely, picking a divergent treatment path from another reference for processing hides and switching back and forth between methods for manufacturing substantially different products.

Applicant does not believe that the Section 103 rejections rejecting the claims as previously pending in view of the combination of references failed to present valid *prima facie* rejections in view of the fact that they did not provide sufficient reasons or explicit analysis of why the disclosures or references should be combined. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." In re Kahn, 441 F. 3d 977, 988 (Fed. Cir. 2006), cited with approval in KSR Int'l. v. Teleflex Inc., 127 S. Ct. 1727; 82 USPQ2d 1385 (2007). As

such, the combinations of references in all Section 103 rejections were (and are) improper.

The Examiner has based all of the § 103 obviousness rejections on improper hindsight reasoning. What the Examiner did in the § 103 rejections is to use the highly innovative and novel solution taught by the Applicants as a blueprint, and looked to other prior art for the individual elements present in the claims. "Defining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness." Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH, 139 F.3d 877, 880, 45 USPQ2d 1977 (Fed. Cir. 1998). This approach has been uniformly and consistently rejected by the Federal Circuit and in doing so the Examiner neglected to consider the invention as a whole.

In light of the amendments presented herein, Applicants' assert that the references do not teach all the limitations of independent Claims 1, 33, 35, and 37, and therefore Claims 1, 33, 35 and 37, and all claims depending therefrom, are patentable over any combination of Williams, Carr, Pfleiderer, Hague, Talty and/or Thiele. The Examiner is respectfully requested to allow these claims of the present application.

4. Claim 30 is rejected under 35 U.S.C. § 103(a) as being unpatentable in view of U.S. Pat. No. 4,484,924 to Ernst Pfleiderer ("Pfleiderer") in view of U.S. Pat. No. 3,670,534 to Bruce Gould ("Gould") and U.S. Pat. No. 3,913,360 to Eric Holdsworth ("Holdsworth"). The rejection provides no motivation for combining Gould and Holdsworth with Pfleiderer, simply stating that the prior art devices taught by Holdsworth and Gould "would have been within the ambit of ordinary skill."

As noted above, the independent claims of this application, including Claim 1 from which Claim 30 depends, are allowable because the references do not teach

crustacean bait or methods for producing crustacean bait. Claim 30 is allowable because Claim 1 is allowable.

The application is considered in form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted:

BY /Antonia M. Holland/  
Antonia M. Holland  
Attorney for Applicants  
Registration No. 53,840

Reinhart Boerner Van Deuren s.c.  
1000 North Water Street, Suite 2100  
Milwaukee, WI 53202

(414) 298-8285

Customer No. 22922